INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Amended statement as to jurisdiction	3
Nature of case and rulings below	3
Statutory provisions	5
Cases sustaining the Supreme Court's jurisdiction on appeal	6
Date of decree and date of presentation of application for appeal	6
Decree of opinion of the District Court	6
Miscellaneous	7
Exhibit "A"—Final decree of the District Court	8
Exhibit "B"—Findings of fact and conclusions of law	9

Table of Cases Cited.

Ann Arbor Railroad Co. v. *United States*, 281 U. S. 658	6
Beaumont, Sour Lake & Western Ry. Co. v. *United States*, 282 U. S. 74	6
Florida v. *United States*, 282 U. S. 194	6
Interstate Commerce Commission v. *Union Pacific Ry. Co.*, 222 U. S. 541	6
Louisville & Nashville R. R. Co. v. *United States*, 238 U. S. 1	6
United States v. *Baltimore & Ohio R. R. Co.*, 293 U. S. 454	6
United States v. *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499	6
United States v. *Maher*, 307 U. S. 148	6

Statutes Cited.

Interstate Commerce Act:	
Section 205(g) of Part II (49 U. S. C. 305g)	1, 4
Section 209(a) of Part II (49 U. S. C. 309a)	1, 4
Judicial Code, Section 210 (28 U. S. C. 47a)	2
Motor Carrier Act of 1935, Section 209	4

United States Code: Page

Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, Section 207, 36 Stat. 1148; October 22, 1913, c. 32, 38 Stat. 219) 5

Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Sec. 1, 43 Stat. 938) 5

Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220) 5

Title 28, Section 47a (Act of March 3, 1911, c. 231, Section 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220) 5

Title 28, Section 345 (Act of March 3, 1891, c. 517, Section 5, 26 Stat. 827, as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, Section 35, 31 Stat. 158; March 3, 1909, c. 269, Section 1, 35 Stat. 838; March 3, 1911, c. 231, Sections 238, 244; 36 Stat. 1157; January 28, 1915, c. 22, Section 2, 38 Stat. 804; February 13, 1925, c. 229, Section 1, 43 Stat. 938) 5

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 2568

READY TRUCK LINES, INC., A CORPORATION,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

STATEMENT OF JURISDICTION.

Ready Truck Lines, Inc., plaintiff, by its attorneys, presents with its petition for the allowance of an appeal to the Supreme Court of the United States from the final decree entered herein on May 2, 1941, the following statement of jurisdiction pursuant to Rule 12 of said Supreme Court.

1. Plaintiff's application for a permit to operate in interstate commerce as a contract carrier by motor vehicle, based upon operations conducted July 1, 1935, and continuously since, which application was filed with the Interstate Commerce Commission under Section 209(a) of Part II of the Interstate Commerce Act, formerly known as the Motor Carrier Act of 1935, (U. S. Code, Supp. I, Title 49, Section 309(a)), was denied by order of that Commission.

2. This case was filed by plaintiff to enjoin the Commission's order, under Section 205(g) of Part II of the

Interstate Commerce Act (U. S. Code, Supp. I, Title 49, Section 305 (g)), which provides that any final order of the Interstate Commerce Commission made under Part II of that Act shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under Part I. The District Court dismissed the case for want of equity.

3. Sections 41 (28) and 43 to 47, inclusive, of the United States Code give to the District Courts of the United States jurisdiction of cases brought to enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission.

4. Section 210 of the Judicial Code (U. S. Code, Title 28, Chapter 2, Section 47a) provides that the final decree of the District Court in such cases may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken within sixty days after entry of final decree.

5. No question of the validity of any statute or treaty is involved.

6. This is not an appeal from an interlocutory decree.

7. The date of entry of the final decree of the District Court sought to be reviewed is May 2, 1941, and the date of presentation of plaintiff's application for appeal is May 7, 1941.

8. No opinions were delivered by or in the District Court upon the rendering of the decree sought to be reviewed, or earlier in the same case, or in companion cases.

READY TRUCK LINES, INC.,
Plaintiff-Appellant,
By GERALD T. WILEY,
J. AUSTIN LATIMER,
Its Attorneys.

HALFPENNY, HAHN, WILEY and SAKELSON,
Of Counsel.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

No. 2568

READY TRUCK LINES, INC., A CORPORATION,
Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants-Appellees.

AMENDED STATEMENT OF JURISDICTION.

Ready Truck Lines, Inc., plaintiff, by its attorney, presents with its petition for the allowance of an appeal to the Supreme Court of the United States from the final decree entered herein on May 2, 1941, the following amended statement of jurisdiction pursuant to Rule 12 of said Supreme Court.

A. Nature of Case and Rulings Below.

Plaintiff's application for a permit to operate in interstate commerce as a contract carrier by motor vehicle, based upon operations conducted July 1, 1935, and continuously since, which application was filed with the Inter-

state Commerce Commission under Section 209(a) of Part II of the Interstate Commerce Act, formerly known as the Motor Carrier Act of 1935 (U. S. Code, Supp. I, Title 49, Section 309(a)), was denied by order of that Commission.

This case was filed by plaintiff to enjoin the Commission's order, under Section 205(g) of Part II of the Interstate Commerce Act (U. S. Code, Supp. I, Title 49, Section 305(g)), which provides that any final order of the Interstate Commerce Commission made under Part II of that Act shall be subject to the same right of relief in court by any party in interest as is now provided in respect to orders of the Commission made under Part I.

Plaintiff complained that the Commission had failed to grant a fair hearing, failed to grant a full hearing, that its findings were not based upon substantial evidence, that its order was erroneous in law, that plaintiff was entitled to a permit, and that by reason of the Commission's denial order the plaintiff would be required to cease the extensive operations conducted prior to, on and since July 1, 1935, and would suffer great irreparable damage.

A certified copy of the transcript of proceedings of the Commission was received in evidence by the statutory three-judge court. The case was dismissed for want of equity.

The questions presented by this appeal are substantial, involving (a) fundamental rights to a full and fair hearing, (b) duties and powers of the Commission with respect to the issuance of contract carrier permits under the so-called "grandfather" clause of Section 209 of the Motor Carrier Act, 1935, and with respect to hearings held to determine whether persons are entitled to such permits, and (c) questions whether there was any evidence to support the Commission's findings and order in this case.

B. Statutory Provisions.

The following statutory provisions, giving the District Courts of the United States jurisdiction of cases brought to enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission, and providing that the final decree of the District Court in any such cases may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken within sixty days after entry of final decree, are believed to sustain the jurisdiction:

U. S. C., Title 28, Sec. 47a (Act of March 3, 1911, c. 231, Section 210, 36 Stat. 1150; as amended by Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 41 (28) (Act of June 18, 1910, c. 309, 36 Stat. 539; as amended March 3, 1911, c. 231, Section 207, 36 Stat. 1148; October 22, 1913, c. 32 Stat. 219).

U. S. C., Title 28, Section 44 (Act of October 22, 1913, c. 32, 38 Stat. 220; as amended by Act of February 13, 1925, c. 229, Section 1, 43 Stat. 938).

U. S. C., Title 28, Section 47 (Act of October 22, 1913, c. 32, 38 Stat. 220).

U. S. C., Title 28, Section 345 (Act of March 3, 1891, c. 517, Section 5, 26 Stat. 827; as amended January 20, 1897, c. 68, 29 Stat. 492; April 12, 1900, c. 191, Section 35, 31 Stat. 158; March 3, 1909, c. 269, Section 1, 35 Stat. 838; March 3, 1911, c. 231, Sections 238, 244, 36 Stat. 1157; January 28, 1915, c. 22, Section 2, 38 Stat. 804; February 13, 1925, c. 229, Section 1, 43 Stat. 938).

C. Cases Sustaining the Supreme Court's Jurisdiction on Appeal.

United States v. *Chicago, Milwaukee, St. Paul & Pacific R. R. Co.*, 294 U. S. 499.

United States v. *Baltimore & Ohio R. R. Co.*, 293 U. S. 454.

Florida v. *United States*, 282 U. S. 194.

Beaumont, Sour Lake & Western Ry. Co. v. *United States*, 282 U. S. 74.

Ann Arbor Railroad Co. v. *United States*, 281 U. S. 658.

Louisville & Nashville R. R. Co. v. *United States*, 238 U. S. 1.

Interstate Commerce Commission v. *Union Pacific Ry. Co.*, 222 U. S. 541.

United States v. *Maher*, 307 U. S. 148.

D. Date of Decree and Date of Presentation of Application for Appeal.

The date of entry of the final decree of the District Court sought to be reviewed is May 2, 1941, and the date of presentation of plaintiff's application for appeal is May 7, 1941.

E. Decree of Opinion of the District Court.

No opinions were delivered by or in the District Court upon the rendering of the decree sought to be reviewed, or earlier in the same case, or in companion cases.

Appended to this statement is a copy of the final decree sought to be reviewed and a copy of the findings of fact and conclusions of law of the District Court.

F. Miscellaneous.

This is not an appeal from an interlocutory decree.

No question of the validity of any statute or treaty is involved.

Respectfully submitted,

GERALD T. WILEY,
J. AUSTIN LATIMER,
111 West Washington Street,
Chicago, Illinois,
Attorney for Ready Truck Lines, Inc.,
Plaintiff-Appellant.

Dated June 3rd, 1941.

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 2568.

READY TRUCK LINES, INC., a Corporation, Plaintiff,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants.*

Final Decree.

This cause having come on for final hearing before the special court of three judges, constituted as required by the Act of October 22, 1913 (c. 32, 38 Stat. 219 U. S. C. Title 28, Sec. 47) and the Motor Carrier Act of 1935, Sec. 205 (h) (c. 498, 49 Stat. 543, U. S. C. Suppl. 1, Title 49, Sec. 305 (h)), and the Court having made and filed its findings of fact and conclusions of law, and upon consideration of the evidence and arguments of counsel orally and on brief, having concluded, found and determined that the petition for a temporary and permanent injunction should be dismissed for want of equity.

It is Ordered, Adjudged and Decreed that the petition for a temporary and permanent injunction be and the same is hereby dismissed for want of equity.

This 2nd day of May, 1941.

OTTO KERNER,
United States Circuit Judge;
PHILIP L. SULLIVAN,
United States District Judge;
M. L. IGOE,
United States District Judge.

EXHIBIT "B".

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

No. 2568.

READY TRUCK LINES, INC., a Corporation, Plaintiff,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Defendants.*

Requested Findings of Fact and Conclusions of Law by Defendants, United States of America and Interstate Commerce Commission.

In the above-entitled cause, the court makes the following Findings of Fact:

1. The plaintiff, a corporation, brings this suit to suspend, set aside and annul the Interstate Commerce Commission's orders of September 30, 1940, and December 20, 1940, entered in a proceeding entitled Ready Truck Lines, Inc., Contract Carrier Application, MC 28005.

2. On February 12, 1936, plaintiff's predecessor filed an application with the Interstate Commerce Commission (hereinafter referred to as "Commission") under Section 209 (a) of the Interstate Commerce Act seeking a "grandfather" permit as a contract carrier by motor vehicle of packing house products, fertilizer, canned goods, groceries, and roofing materials, in interstate or foreign commerce, between points in Illinois, Indiana, Ohio, and Kentucky over irregular routes.

3. Hearing was had on this application at Chicago, Ill., on October 17, 1938, at which numerous motor carriers and rail carriers operating in the territory in which rights were sought opposed the granting of the application.

4. Prior to the issuance of a final report and order by the Commission petition was filed by certain protestants asking

that the proceeding be reopened. The basis for this request was that certain evidence developed at a hearing before the Commission in application of Budreck Truck Lines, MC 39073, indicated that plaintiff had misrepresented the facts as to his inability to produce documentary proof of operations prior to September, 1935, because his records had been destroyed by fire, and further that all of the claimed operations were not those of the plaintiff, but of another carrier who had a valid "grandfather" application then pending.

5. On November 21, 1939, the Commission reopened the proceedings and further hearing was held thereon at Chicago on February 19, 1940. Further hearing was also had on June 3, 1940, of which plaintiff had due notice.

6. At the hearing on June 3, 1940, plaintiff advised the sitting examiner that he had documentary proof of his operations subsequent to September, 1935, but that he would not offer such evidence in the case, being content to rest upon the record as then constituted notwithstanding that the sitting examiner stated that he would entertain a motion to continue the hearing in order to afford plaintiff an opportunity to introduce such evidence.

7. On September 30, 1940, the Commission issued its report and order denying plaintiff's application, said report being officially reported in 26 M. C. C. 213.

8. On November 4, 1940, plaintiff filed a petition asking for the postponement of the effective date of the order of September 30, 1940, and for rehearing. The grounds advanced for rehearing were that plaintiff had procured documentary evidence in support of his claims of operations on July 1, 1935, and continuously thereafter. On December 20, 1940, the Commission by order denied this petition.

9. The findings of the Commission as set out in said report of September 30, 1940, upon which its order of the same date denying plaintiff's application was based, are as follows:

"Williams was granted a permit by the Public Service Commission of Indiana on November 19, 1937, and by the

Public Utilities Commission of Ohio on January 10, 1938. On or about July 1, 1935, most of the shipments alleged to have been transported by him were transported by other carriers and by so-called owner-operators. The testimony is conflicting as to whether the shipments were transported at that time on the shipping documents of Williams or on those of the carriers who actually performed the transportation service. It is estimated by Williams that on July 1, 1935, approximately 70 per cent of the shipments tendered to him were transported on equipment other than his own. Late in 1935 and early in 1936, most of the shipments tendered to Williams were transported by either the B. & R. Trucking Company, of Argos, or Selab, Inc., under permits granted to these lines by the States of Indiana and Ohio. After Williams severed relations with these lines, he operated his own equipment into Indiana either without State authority, or under State permits granted to B. & R. Trucking Company and other motor lines without their knowledge or consent. From this time until November 19, 1937, when Williams was authorized to operate in interstate commerce in Indiana, he was fined on numerous occasions for failure to carry insurance and to comply with other requirements of that state."

"The lease arrangement consisted of nothing more than a verbal understanding between Williams and the owner-operators that the latter would perform service for Williams on a per-trip basis, for which compensation would be from 65 to 80 per cent of the revenue."

"A witness associated with Ready Foods Company since August 1935, except for the period from February to April 1936, when he was employed by Williams testified that shipments tendered to Williams from August 1935 to March 1936 moved over lines of B. & R. Trucking Company of Argos, Ind., and certain other motor lines. During this time cargo insurance was carried by these carriers and not by Williams on such shipments."

"Whereas here, it has been established that the applicant claiming 'grandfather' rights made extensive use of the facilities and services of other carriers whose vehicles were not under its domination and control, there should be a

clear showing by the applicant as to what, if any, interstate operations were carried on by the use of its own vehicles. No such showing has been made in this proceeding. It is not at all certain how many, if any, vehicles were owned and operated by Williams on or prior to July 1, 1935."

"In addition to the necessity for showing the exact character and scope of the operations conducted by Williams on July 1, 1935, the burden is on applicant to establish the truth of all allegations in regard to the continuance thereof by competent and substantial evidence. No such showing has been made. No documentary evidence was submitted to show bona fide operations on July 1, 1935, and continuously since that time, and the oral evidence in regard thereto is vague and somewhat contradictory. The evidence is insufficient to establish that Williams owned or operated any vehicles in his own name on July 1, 1935. The exact date on which he began operation in his own name is not clear from the record. We are not convinced that any interstate operations were performed by Williams prior to November 1935, when he was employed by other carriers."

"We find that applicant has failed to establish that its predecessor in interest was on July 1, 1935, and that such predecessor and applicant continuously since then have been, in bona fide operation, in interstate or foreign commerce, as a contract carrier by motor vehicle of any commodities between the points set forth in the application; and that the application should be denied."

The court thereupon announces the following Conclusions of Law:

1. The plaintiff was accorded a full and fair hearing before the Commission.

2. The Commission did not err in entering its order of December 20, 1940, denying plaintiff's petition for rehearing.

3. The findings set forth in the report of the Commission of September 30, 1940, considered as a whole, are sufficient to sustain and justify the order of the Commission of Sep-

tember 30, 1940, and the testimony and exhibits received by the Commission, as set out in the certified transcript filed in this cause contain substantial evidence to support the findings of the Commission in its said report and its order made pursuant thereto.

4. The action of the Commission upon plaintiff's application, as set out in its report and order, was a valid exercise of its legal powers, and was warranted by the facts shown in the Commission's record.

5. The plaintiff's bill will be dismissed for want of equity.

OTTO KERNER,
United States Circuit Judge.
PHILIP L. SULLIVAN,
United States District Judge.
M. L. IGOE,
United States District Judge.

FILE COPY

Office - Supreme Court, U.
FILED
OCT 23 1941
CHARLES ELMORE CROPL
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 244

READY TRUCK LINES, INC.,

Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

APPELLANT'S BRIEF OPPOSING MOTION TO AFFIRM.

GERALD T. WILEY,
J. AUSTIN LATIMER,
Counsel for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 244

READY TRUCK LINES, INC.,

Appellant,

vs.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

APPELLANT'S BRIEF OPPOSING MOTION TO AFFIRM.

Ready Truck Lines, Inc., appellant, now comes and opposes appellees' Motion to Affirm, pursuant to Rule 7, paragraph 3, for the following reason:

The questions on which the decision of the cause depend are substantial.

This is not simply a case wherein the Interstate Commerce Commission was called upon to weigh conflicting evidence as to appellant's claim of "grandfather" rights by virtue of having been in operation on and since the statutory date provided for by the Motor Carrier Act.

This case involves fundamental rights of a motor carrier to a fair hearing by the Commission. And, while it goes without saying that, the Interstate Commerce Commission has, prior to its administration of the Motor Carrier Act, been almost uniformly fair in its proceedings, it is apparent from the handling of appellant's case that the Motor Carrier Act has burdened it with such a volume of work as to impair its previous excellent record.

Appellees' motion is based upon two propositions: (1) Appellant had a full hearing because its petition for rehearing based upon newly discovered evidence did not show that the evidence was not available at the original hearing, that the evidence could not have been procured with diligence, and that the evidence would have affected the issues; and (2) appellant had a fair hearing because he pitted his testimony against that of others, and the Commission is entrusted to determine controverted issues of fact.

With respect to a full hearing, the record positively shows that the newly discovered evidence was not available to appellant, nor could it have been procured with diligence at the original hearing. The record shows that this evidence was in the form of shipping documents in the possession of National Tea Company, one of appellant's shippers; that said documents had been thought by said shipper to have been destroyed a long time prior; that said documents show that appellant transported commodities in the territory on and continuously since the statutory "grandfather" date, as claimed by appellant. The record shows that these representations were made to the Commission when appellant requested the rehearing.

With respect to a fair hearing, appellant does not complain that the Commission simply weighed evidence and found against appellant. As set forth in appellant's Assignment of Errors, the Commission and its hearing examiner in this case acted in such an unfair and arbitrary

manner throughout as to render the questions raised by this appeal of substantial importance not only to appellant but to all motor carriers subject to the Motor Carrier Act.

Involved in this appeal is the question of the competency of all of the evidence offered by protestants and upon which the Commission based its report and order. While appellant realizes that the Commission is not bound by mere technical rules of evidence, protestants were permitted by the hearing examiner to run wild with: (a) testimony in violation of a stipulation, which stipulation appellant consistently abided by and under which it surrendered many valuable operating rights; (b) testimony of the rankest sort of hearsay; (c) testimony regarding rate differences, which had no relation to the issues involved; (d) "cross-examination" of their own witnesses by use of leading and suggestive questions; and other equally offensive conduct that absolutely deprived appellant of a fair hearing upon the facts at issue. This is the record upon which the Commission found against appellant.

Unless this Supreme Court, our court of last resort, accepts the jurisdiction given it by Congress in this cause, and passes upon the methods by which appellant was denied its statutory right to continue the operation of a substantial motor trucking business a milestone in the extension of growing arbitrary actions of administrative bodies will have been passed, and the precedent, that the Commission's unfair conduct does not present a substantial question, will stand as an obstacle confronting every person appearing before administrative bodies.

Appellees' motion to affirm should be denied.

Respectfully submitted,

GERALD T. WILEY,
J. AUSTIN LATIMER,
Counsel for Appellant.

In the Supreme Court of the United States

OCTOBER TERM, 1941

No. 244

READY TRUCK LINES, INC., APPELLANT

v.

UNITED STATES AND INTERSTATE COMMERCE COMMISSION, APPELLEES

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

MOTION TO AFFIRM

Appellees, pursuant to Rule 12, paragraph 3, and Rule 7, paragraphs 3 and 4, move that the decree of the court below be affirmed.

1. This is a direct appeal from the final decree of a specially constituted court of three judges established pursuant to the Urgent Deficiencies Act of October 22, 1913, dismissing appellant's petition to annul, set aside and enjoin an order of the Interstate Commerce Commission entered September 30, 1940. The Commission's order denied appellant's application for a permit as a contract carrier by motor vehicle under the "grandfather" proviso of Section 209 (a) of the

420933—41

Motor Carrier Act, 1935 (the pertinent provisions of which are quoted in the Appendix hereto), upon a finding that the applicant had failed to establish that it was on July 1, 1935, and continuously since had been, in bona fide operation as a contract carrier by motor vehicle.

2. The decree of the court below, sustaining the Commission's order, should be affirmed without argument because the appeal therefrom presents no substantial question. While appellant's jurisdictional statement does not disclose the specific grounds of appeal, it is clear from the assignment of errors that only two contentions are seriously urged, namely, (1) that appellant was not accorded a full hearing by the Commission, and (2) that the findings of the Commission were not based upon substantial evidence. The court below, upon a consideration of the record before the Commission, wrote no opinion but filed formal findings that appellant had been accorded a full hearing and that the Commission's order was supported by substantial evidence.

3. The proceedings before the Commission clearly satisfy the requirements of a full hearing. Three hearings were held on October 17, 1938, February 19, 1940, and June 3, 1940. Appellant was given full opportunity to present any evidence which it desired in support of its application. At the last hearing, appellant was advised by the examiner that a motion to continue would be enter-

tained for the purpose of allowing appellant to procure and offer additional evidence at a subsequent hearing. Appellant then stated that it was content to rest on the record as then constituted. Prior to the issuance of its final report and order, the Commission gave due consideration to the exceptions filed by appellant to the examiner's proposed report and to appellant's brief in support thereof. The Commission, after due consideration, denied appellant's petition for rehearing upon the ground of after-discovered evidence, but there was no showing that such evidence had not been available to appellant at the hearing, or could not have been procured by the exercise of due diligence, or that such evidence, if accepted, would affect the determination of the issues. The requisites of full hearing were satisfied. *New England Divisions* case, 261 U. S. 184, 200; *Baltimore & Ohio R. Co.* v. *United States,* 298 U. S. 349.

4. The appellant's challenge to the sufficiency of the evidence to sustain the Commission's order is unsubstantial. In the hearing before the Commission, appellant pitted his own undocumented testimony as to his operations against the sworn testimony of various carrier witnesses to the effect that appellant's motor vehicle operations on the "grandfather" date were not appellant's operations at all but were the operations of other carriers by whom appellant was employed. The Commission resolved this direct conflict in the

testimony against appellant. This court stated in *United States* v. *Maher*, 307 U. S. 148, at pages 153–154:

> Whether an applicant seeking an exemption had in fact been in operation within the immunizing period of the statute was bound to raise controverted matters of fact. Their determination Congress entrusted to the Commission.

For the foregoing reasons, we believe that none of the questions raised on this appeal are of substance. It is respectfully submitted that the judgment of the district court should be affirmed.

CHARLES FAHY,
Acting Solicitor General.
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

U. S. GOVERNMENT PRINTING OFFICE: 1941

FILED
DEC 10 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 244

READY TRUCK LINES, INC.,
Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

PETITION FOR REHEARING.

J. AUSTIN LATIMER,
GERALD T. WILEY,
Counsel for Appellant.

INDEX.

Subject Index.

	Page
The question here presented was not passed upon in the per curiam order of November 10, 1941	1
The questions presented, in addition to being substantial, are important	6
Certificate of counsel	7

Table of Cases Cited.

Chicago Junction Case, 264 U. S. 258	3, 6
Hale v. *Henkel*, 201 U. S. 43	5
Maher v. *United States*, 307 U. S. 148	2, 3
Morgan v. *United States*, 298 U. S. 468	3, 6
Morgan v. *United States*, 304 U. S. 1	3, 6
New England Divisions Case, 261 U. S. 184	3, 6
Wilson v. *United States*, 221 U. S. 366	5

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 244

READY TRUCK LINES, INC.,
Appellant,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Appellees.

PETITION FOR REHEARING.

Ready Truck Lines, Inc., the appellant in this cause, respectfully prays that this Honorable Court grant a rehearing of the above entitled cause, and respectfully shows:

1. The question here presented was not passed upon in the per curiam order of November 10, 1941.

The appellees filed a motion to affirm the judgment of the District Court upon the ground that the appeal presents no substantial question.

The *per curiam* order of this Court is as follows:

> "*Per Curiam:* The motion to affirm is granted and the judgment is affirmed. Sec. 209 (a) of Part II of the Interstate Commerce Act, 49 U. S. C. Sec. 309 (a); United States *v.* Maher, 307 U. S. 148, 153-4. Mr. Justice Jackson took no part in the consideration and decision of this case."

Sec. 209 (a) of Part II of the Interstate Commerce Act provides for the granting by the Commission of permits to contract carriers by motor vehicle, and states specifically that "if any such carrier or a predecessor in interest was in *bona fide* operation as a contract carrier by motor vehicle *on July 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time* * * *," the Commission shall issue such permit without the necessity of showing that the operation is consistent with the public interest.

The case of *United States* v. *Maher*, 307 U. S. 148, involved the application of a common carrier by motor vehicle for a certificate under Section 206 (a) of that Act, which section granted similar "grandfather" rights to a common carrier in *bona fide* operation on June 1, 1935, and continuously since.

But at this point the similarity between our case and the *Maher* case ends. Appellant has not raised any of the questions raised and decided in the *Maher* case.

In the *Maher* case, the carrier filed its application under the "grandfather" clause, and admittedly failed to show continuity of "grandfather" operations. The evidence admittedly showed that Maher had conducted "anywhere-for-hire" operations from 1931 to May 29, 1936, and then ceased these operations and instituted "regular route" operations. Maher contended: (a) that as a matter of law he was entitled to "grandfather" clause authority to conduct "anywhere-for-hire" operations, notwithstanding the cessation of these operations on May 29, 1936, and (b) that as a matter of law he was entitled to a hearing and determination of the question of whether public convenience and necessity required his "regular route" operations instituted on May 29, 1936, notwithstanding his failure to file an application based upon public convenience and necessity.

This Court, in *Maher* v. *U. S.*, 307 U. S. 148, decided those and only those points, upon an interpretation of the statute involved, and said, with reference to controverted matters of fact, that "Their determination Congress entrusted to the Commission".

The case at bar, involving the Commission's order in the matter of READY TRUCK LINES, INC., appellant, involves entirely different questions, as can be readily seen by appellant's Assignment of Errors and as pointed out in appellant's Brief opposing Motion to Affirm.

Appellant presents the following substantial propositions, none of which were passed upon in the *Maher* case:

(a) Appellant was not afforded a full hearing by the Commission;

(b) Appellant was not afforded a fair hearing by the Commission; and

(c) There is absolutely no competent evidence in the record of the Commission to support its findings and order.

This Court has repeatedly held that these are substantial questions. *New England Divisions Case,* 261 U. S. 184; *Morgan* v. *United States,* 298 U. S. 468; *Morgan* v. *United States,* 304 U. S. 1; and *Chicago Junction Case,* 264 U. S. 258, wherein it was said:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence or to make an essential finding without supporting evidence is arbitrary action."

Appellant, after a thorough search, has not found any decision wherein this or any other Court has passed upon the action or conduct of any Commission or hearing officer similar to the action and conduct of the Commission and its hearing officer in this case. It is extremely doubtful whether a

hearing of the character of the hearing afforded Appellant ever occurred before.

The Assignment of Errors states fully the conduct complained of. A few of the points are as follows:

(a) Protesting carriers, after entering into a stipulation whereby appellant withdrew that part of his application pertaining to the major portion of Ohio, and whereby the protestants agreed not to oppose the grant of certain other operating authority, were permitted to introduce pages and pages of testimony in opposition to the grant of the other authority, in direct violation of their stipulation. At this time, appellant had already withdrawn the part of its application in accordance with the stipulation.

(b) Protesting carriers "cross-examined" each other's witnesses. By means of this ruse, they were permitted to use leading and suggestive questions throughout the hearing on matters not adverse to but in the interest of the cross-examining protestants.

(c) Protesting carriers were permitted to introduce pages of testimony concerning rate differences between appellant and some of its common carrier competitors. In the first place there are many economic factors justifying rate differences between contract carriers and common carriers, and the Commission has repeatedly recognized the justification for such differences. But aside from that, such testimony was absolutely incompetent. This was not a rate hearing. There was no complaint filed against appellant regarding unjustly high or low rates. This was a hearing on appellant's application for "grandfather" operating rights, and the sole question for the Commission's determination was: "Over what routes or in what territory has appellant been in continuous operation on and since July 1, 1935?"

(d) Protesting carriers were permitted to introduce the rankest sort of hearsay testimony. For example, one wit-

ness testified that appellant owned no equipment, stating that his source of information was some attorney with whom he had had a telephone conversation, had never seen, and whose name, address or telephone number the witness did not know.

(e) Protesting carriers obtained from the Commission a *subpoena duces tecum* commanding appellant to produce at a hearing all correspondence, bills of lading, manifests, shipping receipts, papers, documents, leases, contracts, agreements, etc., from January 1, 1934, to February 1, 1940. Appellant properly refused to obey the subpoena, which would have required bringing several large truck loads of papers, on advice of counsel, because the subpoena was so broad as to constitute an unreasonable search and seizure (See *Wilson* v. *U. S.*, 221 U. S. 366; *Hale* v. *Henkel*, 201 U. S. 43). The Commission censured appellant and commented unfavorably upon the refusal to obey this subpoena, notwithstanding that the refusal to obey an illegal subpoena is the usual and approved method of resistance. *Wilson* v. *U. S.*, 221 U. S. 366; Hausel and Walser, Federal Criminal Cases, Sec. 147.

(f) Notwithstanding an order of the Commission vacating a prior reference of the matter to one examiner for hearing, the Commission relied upon some of the testimony submitted to that examiner at that hearing.

(g) The Commission granted protestants a rehearing based upon alleged newly discovered evidence, although the record shows that protestants had knowledge of the so-called "evidence" and incorporated the allegations in a protest filed long before the original hearing; and, on the contrary, the Commission refused appellant a rehearing based upon newly-discovered evidence in the form of old shipping documents found by a disinterested shipper, Na-

tional Tea Company, among old records believed to have been previously destroyed by the shipper.

2. The questions presented, in addition to being substantial, are important.

That the questions involved in this appeal are substantial was shown above. *New England Divisions Case,* 261 U. S. 184; *Morgan* v. *United States,* 298 U. S. 468; *Morgan* v. *United States,* 304 U. S. 1; *Chicago Junction Case,* 264 U. S. 258.

That the questions involved are important to appellant undoubtedly will be admitted by appellees. The record shows that appellant has been engaged in the motor carrier business for many years, operated more than fifty tractors and fifty trailers as of June, 1940 (the number has since then almost doubled), and had contracts to transport truckload shipments of canned goods, groceries, packing house products, feed, fertilizer, and roofing materials for one hundred ten (110) different manufacturers or distributors. The largest packers, canneries, grocers and roofing material companies in the middle west are among them.

That the appeal is important to the public is evident from the facts stated in the foregoing paragraph. With the daily increasing shortage of transportation facilities, shippers of these commodities, important to the feeding and housing not only of military forces, but also of civilians in defense work, find the problem of prompt and efficient distribution ever increasing.

And finally, with reference to the motor carriers of this nation, the questions involved in this appeal are all important. Since the Interstate Commerce Commission was given authority by Congress to regulate motor carriers, over 200,000 applications of one kind or another have been filed by motor carriers. Unquestionably the Commission has on the whole been fair in the administration of the law. But,

as is evident from the foregoing, the Commission has failed in its duty to be fair in this case. To deny this appeal is to approve the conduct of the hearing officer to whom the case was assigned by the Commission. And to approve of such flagrant violations of the right to a fair, full, impartial hearing is to announce to every motor carrier in the nation that our governmental bodies need no longer abide by the rules because such action no longer involves a substantial question.

For the foregoing reasons, it is earnestly submitted that this petition be granted.

Respectfully submitted,

J. AUSTIN LATIMER,
GERALD T. WILEY,
Counsel for Petitioner.

Certificate of Counsel.

I, Gerald T. Wiley, one of the counsel for the above named Appellant, READY TRUCK LINES, INC., do hereby certify that in my opinion the foregoing petition has merit, and that the petition is presented in good faith and not for delay.

GERALD T. WILEY,

No. 244. READY TRUCK LINES, INC. *v.* UNITED STATES ET AL. Appeal from the District Court of the United States for the Northern District of Illinois. November 10, 1941. *Per Curiam:* The motion to affirm is granted and the judgment is affirmed. § 209 (a), Part II, Interstate Commerce Act, 49 U. S. C., § 309 (a); *United States* v. *Maher*, 307 U. S. 148, 153–4. MR. JUSTICE JACKSON took no part in the consideration and decision of this case. *Messrs. Gerald T. Wiley* and *J. Austin Latimer* for appellant. *Assistant Solicitor General Fahy* and *Mr. Daniel W. Knowlton* for appellees.